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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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COMMISSIONERS:

MIKE GLEASON – Chairman

WILLIAM A. MUNDELL

JEFF HATCH-MILLER

KRISTIN K. MAYES

GARY PIERCE

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MM

In the matter of:

EXCEPTION

Docket No. S-20437A-05-0925

Reserve Oil & Gas, Inc., a Nevada corporation
3507 North Central Avenue, Suite 503
Phoenix, Arizona 85012

Allen and Jane Doe Stout, Sr., husband and wife
1309 West Portland Street
Phoenix, Arizona 85007-2102

Allen and Jane Doe Stout, Jr., husband and wife
1309 West Portland Street
Phoenix, AZ 85007-2102

Respondents.

**EXCEPTIONS TO THE
RECOMMENDATION OF THE
ADMINISTRATIVE LAW JUDGE**

Respondents Reserve Oil & Gas, Inc. and Allen C. Stout (collectively, “Respondents”), by and through undersigned counsel, hereby file their Exceptions to the Recommendation of the Administrative Law Judge (“ALJ”).

I. INTRODUCTION.

This proceeding began approximately three years ago when the Securities Division (the “Division”) filed its December 30, 2005 Temporary Order to Cease and Desist and Notice of Opportunity for Hearing (“TC&D”). The hearing occurred on May 2 and 3, 2007 and July 17, 2007.

The Division failed to prove that any alleged purchases occurred within or from Arizona.

The Division’s case was offered primarily through Mr. Gregory A. Thomsen (“Mr. Thomsen”), a Division employee who had nothing to do with the investigation. Mr. Thomsen testified he had no personal knowledge about any of the facts or matters at issue in this case. Mr. Thomsen merely reviewed the file before taking the stand. Mr. Thomsen testified on direct exactly as the Division wanted even though he had no personal knowledge about, or basis

1 for, his testimony.

2 The late Peter Mangurian ("Mr. Mangurian") is an alleged investor. Exhibit R-7 is a
3 March 8, 2006 memo Bill Smith ("Mr. Smith"), a former Division investigator, prepared based
4 upon his interview with Mr. Mangurian. Mr. Smith wrote that Mr. Mangurian first learned of the
5 investment opportunity in California through an electrician, "Eric Van Zecuson."¹

6 On December 15, 2004, Mr. Mangurian provided \$20,000. When the money was not
7 invested with REO Energy, Ltd. ("REO"), Mr. Mangurian became frustrated and requested his
8 investment be returned. The money was returned to him.

9 On June 22, 2005, Mr. Mangurian again provided \$20,000. When the funds were not able
10 to be invested, Mr. Mangurian requested that his investment be placed in an existing well with
11 REO. It is this investment which would subsequently be gifted by Mr. Mangurian to his stepson,
12 Scott Ingell ("Mr. Ingell"). REO transferred the investment directly to Mr. Ingell without any
13 involvement by the Respondents. Nowhere in Exhibit R-7 does Mr. Smith indicate where
14 Mr. Mangurian or Mr. Stout were during the alleged conversations reflected in the memo. In
15 addition, nowhere in the memo does Mr. Smith indicate where any of the funds were sent from or
16 received.

17 Another alleged investor is Mr. Mangurian's companion and California resident, Gloria
18 Langley ("Ms. Langley"). She received her money back, plus interest. Mr. Mangurian was
19 deceased by the time the hearing began. Ms. Langley did not testify. Mr. Ingell did testify briefly
20 by telephone.

21 The fourth alleged investor never invested in any oil and gas opportunity. The ALJ properly
22 rejected the Division's confusing allegations regarding this person. The hearing did not shed any
23 light on why he was included in the case. (See footnote 2 on page 5 of the ALJ's
24 Recommendation.)

25 On September 22, 2005, Mr. Smith assumed a fictitious name ("James Freemire") and went
26

27

¹ The electrician's name is "Eddie Van Surksun."

1 undercover. So far undercover that Alan Walker ("Mr. Walker"), a Division's investigator, could
2 not hear much of what was taking place at Mr. Smith's meeting with Respondents. The transcript
3 of that meeting is unintelligible. There are eight-four (84) "indiscernibles" in forty-two (42)
4 double-spaced pages. (See footnote 9 on page 10 of the ALJ's Recommendation.) There is no way
5 of knowing what was said when an indiscernible appears in the transcript. It is not known whether
6 an indiscernible means one word, one sentence, one paragraph or a hundred words are missing.
7 While Mr. Smith is the "potential Arizona investor" referred to in the TC&D, his deposition
8 testimony is clear that he never had any intention of becoming an investor. In fact, Mr. Smith
9 acknowledged in his deposition that Allen C. Stout had not pressured him to make an investment at
10 their meeting. (See Paragraph 46 of the ALJ's Recommendation.) It is oxymoronic to refer to him
11 as a "potential Arizona investor."

12 The evidence showed that Mr. Mangurian and Ms. Langley were residents of California
13 who allegedly invested in REO as a result of the actions of a non-Respondent who discussed the
14 program with them in California. The Respondents did not offer or sell Mr. Mangurian or
15 Ms. Langley any investment within or from Arizona. Mr. Ingell, a Tennessee resident, invested in
16 REO because he was directed to do so by Mr. Mangurian with Mr. Mangurian's money. Mr. Ingell
17 was on vacation in New York when Mr. Mangurian called him and told him to invest.
18 Mr. Mangurian sent funds to Mr. Ingell for the investment. No Respondent offered or sold
19 Mr. Ingell any investment in REO in Arizona or anywhere. Mr. Mangurian did that while he was in
20 New York and Mr. Ingell was in Tennessee.

21 Furthermore, there was no evidence that Mr. Ingell's only conversation with Allen C. Stout
22 occurred when Mr. Stout was in Arizona. Mr. Ingell never spoke with Allen C. Stout until after he
23 had decided to make the investment. The conversation was simply to ask where the money should
24 be sent. Even that aspect of Mr. Ingell's testimony was not fully developed at the hearing. There
25 was no evidence in the record to whom or at what address the check was sent. None of the
26 Respondents offered or sold any investment within or from Arizona to the four (4) alleged
27 investors. There was no evidence where Allen C. Stout was when he spoke with any of these

1 individuals.

2 The fraud allegations appear to focus on Mr. Stout's tax evasion charge in February 1997.
3 Mr. Stout was sentenced and paid his debt to society. The Division alleges in the TC&D that
4 nowhere on the Reserve website are potential investors told that Mr. Stout was convicted of tax
5 evasion. Of course, nowhere in this case is there any evidence that any investor visited the website.
6 Mr. Smith did, but he never intended to invest. Furthermore, that Mr. Mangurian, Ms. Langley,
7 and Mr. Ingell were all aware that Mr. Stout had been convicted of tax evasion. Even Mr. Smith,
8 the "potential Arizona investor" admitted at his deposition that he was aware of the conviction.

9 The alleged fraud also appears to be based upon allegations that Respondents were
10 providing tax advice. The Division's own TC&D notes that the website contains disclaimers
11 stating that nothing constitutes an offer or solicitation and cautions individuals that they should
12 retain their own counsel for legal and tax advice. The evidence was clear the "potential Arizona
13 investor," Mr. Smith, was never provided with, or offered, tax advice. There simply is no violation
14 of A.R.S. § 44-1991.

15 There are no violations of A.R.S. §§ 44-1841 or 1842 either. These statutes, as does A.R.S.
16 § 44-1991, require the Division to establish that offers and sales occurred within or from Arizona.
17 There is no evidence in the record that any alleged conduct, other than Mr. Smith's visit with the
18 Respondents, occurred within or from Arizona, and Mr. Smith was never offered or sold a security
19 at that meeting. The Division has failed to establish this essential and basic element to its case.

20 **II. THE ALLEGED INVESTORS.**

21 A. Peter Mangurian.

22 The Respondents did not offer or sell Mr. Mangurian any investment within or from
23 Arizona. He was referred to the Respondents by a third party. (Transcript page 40, lines 17-20 and
24 Exhibit R-7.)² Mr. Mangurian was a California resident. (Transcript page 40, lines 24-25.)
25 Reserve returned Mr. Mangurian's first attempt to invest in REO. (Transcript page 401, lines 1-5.)
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27

² The transcript of the hearing will be referred to as "Transcript" throughout.

1 Mr. Mangurian's second attempt resulted in an interest in an REO well. It is this investment he
2 transferred to his stepson, Scott Ingell. (Transcript page 119, lines 20-24.) Mr. Mangurian was
3 aware of Allen C. Stout's tax evasion charge before he invested. (Transcript page 401, lines 10-12.
4 *See also* Exhibit R-7.) There is no evidence that Respondents offered or sold Mr. Mangurian any
5 securities within or from Arizona.

6 B. Gloria Langley.

7 Ms. Langley was also referred to the Respondents through a third party. (Transcript page
8 401, lines 19-21.) Ms. Langley is not an Arizona resident. She lives in California. (Transcript
9 page 401, lines 22-24.) Ms. Langley received her money back plus 10% interest. (Transcript page
10 401, line 25 through page 402, line 2.) Mr. Smith testified during his deposition that he never
11 interviewed Ms. Langley. (Exhibit S-42, page 93, lines 19-21; transcript page 402, lines 3-5.)
12 Exhibit R-7 is the memo Mr. Smith prepared, in part, of his interview with Ms. Langley. Although
13 he denied doing so at his deposition, Mr. Smith obviously interviewed Ms. Langley. According to
14 the memo, Ms. Langley told Mr. Smith that she invested \$10,000 on June 4, 2005. Subsequently,
15 her daughter had a stroke and she requested her money returned. On February 3, 2006, she
16 received a full refund, plus 10% interest. (Exhibit R-7.) Mr. Smith assumed that Ms. Langley was
17 aware of Mr. Stout's tax evasion plea before the investment. (Transcript page 405, lines 5-10. *See*
18 *also* transcript page 405, lines 14-17.) There is no evidence that the Respondents offered or sold
19 Ms. Langley any securities within or from Arizona.

20 C. Scott Ingell

21 Before discussing Mr. Ingell, it is worth noting the definition of "offer to sell." An "offer to
22 sell" or "offer for sale" means:

23 [A]n attempt or offer to dispose of, or solicitation of an order or offer to buy, a
24 security or interest in a security for value or any sale or offer for sale of a warrant
25 or right to subscribe to another security of the same issuer or another issuer.

26 A.R.S. §44-1801(15).

27 Mr. Ingell learned of the REO investment through his stepfather. (Transcript page 119,
lines 9-11.) Mr. Ingell's stepfather is Peter Mangurian. (Transcript page 120, lines 11-13.)

1 Mr. Mangurian called Mr. Ingell in December 2005 and told Mr. Ingell he was making a gift to
2 Mr. Ingell and his wife. Mr. Ingell was contacted by his father-in-law when he was on vacation in
3 New York. (Transcript page 139, lines 19-25; page 131, lines 5-13.) Mr. Mangurian's gift was the
4 transfer of his interest in an REO well. (Transcript page 119, lines 20-24.) At the end of December
5 2005, Mr. Mangurian told Mr. Ingell that he wanted Mr. Ingell to write a check to Reserve to invest
6 in another oil well. (Transcript page 120, lines 19-23.) Mr. Ingell wrote the check because his
7 stepfather told him to do it. (Transcript page 121, lines 21-23.) No Respondent solicited, offered
8 or sold Scott Ingell this investment. (Transcript page 136, lines 20-23.) Allen C. Stout did not
9 misrepresent anything to Mr. Ingell. (Transcript page 136, line 24 through page 137 line 3.)
10 Mr. Ingell was aware that Mr. Stout had been in trouble previously based upon his conversation
11 with his stepfather, Peter Mangurian. (Transcript page 137, lines 4-16.)

12 Mr. Ingell had no dealings with the Respondents in connection with the transfer of
13 Mr. Mangurian's interest. The documents he received on the investment came from REO. He
14 received documentation from the manager of the well instructing him to fill out the papers and
15 return them. (Transcript page 138, line 24 through page 139, line 15.)

16 Mr. Mangurian told Mr. Ingell he needed to call Allen C. Stout to verify the address where
17 the money should be sent. (Transcript page 140, lines 1-4.) The only conversation Mr. Ingell had
18 with Allen C. Stout was to verify where he should send the check. (Transcript page 140, line 25
19 through page 141, line 2.) There is no evidence that Scott Ingell made his unsolicited call to Allen
20 C. Stout when Mr. Stout was in Arizona. Mr. Ingell's decision to invest was based entirely upon
21 his stepfather's advice and not anything the Respondents said or did. (Transcript page 143, lines
22 5-6.) Mr. Ingell received Exhibit S-56 after he had sent his funds. (Transcript page 146, lines 5-9.)
23 There is no evidence indicating precisely where Mr. Ingell sent the check or to whom he sent it.
24 (Transcript page 122, lines 8-12.)

25 **III. THE SEPTEMBER 22, 2005 INEPT RECORDING.**

26 On September 22, 2005, Mr. Smith attached a pager to his notebook, assumed the fictitious
27 name "James or Jim E. Freemire" and went to 3507 North Central Avenue, Suite 503. Mr. Smith

1 testified at his deposition that he never received any training regarding the operation of undercover
2 recording devices. (Exhibit S-41 page 61, lines 12-14.) He also testified that he was unaware
3 whether Mr. Walker, who operated the recording equipment, had been trained in its use. (Exhibit
4 S-41, page 61, lines 6-11.) The eight-four (84) indiscernibles in the forty-two (42) page transcript
5 (two on average per page and one every 12.5 lines) suggest that training had not occurred.

6 Present at the meeting between Mr. Smith, aka Mr. Freemire, was Allen C. Stout, Allen L.
7 Stout and an individual named "Jerry." Mr. Smith testified he had no idea who Jerry was. He had
8 no idea what Jerry's last name was or what position, if any, he may have held. (Transcript page 386,
9 line 24 through page 388, line 9.)

10 Admittedly, this meeting took place in Arizona. But as a review of Exhibit S-36 shows,
11 there was no offer or sale of a security at the meeting, nor was there any misrepresentation or
12 omission of a material fact.

13 Amazingly, Mr. Smith never played the tapes after the meeting was recorded. Nor did he
14 compare those tapes to the content of the transcript. (Transcript page 386, lines 13-23.) Although
15 the Division alleged in its TC&D that the Respondents provided tax advice, that allegation simply
16 was unsupported by the evidence. Mr. Smith testified that Allen C. Stout told him during their
17 conversation that he should speak with his accountant. (Transcript page 392, lines 6-9.) Mr. Smith
18 was told that the Respondents did not provide tax advice or really know taxes. (Transcript page
19 392, lines 10-12.) Allen C. Stout explained that he did not understand the benefits of a new tax bill
20 then being considered in Congress. (Transcript page 392, lines 21-25.) Mr. Smith told the
21 Respondents he wanted to talk to his accountant and Allen C. Stout encouraged him to do that.
22 (Transcript page 395, lines 7-14.) He also encouraged Mr. Smith to verify any tax benefits with his
23 accountant and also with his CPA. (Transcript page 395, line 19 through page 396, line 1.) Allen
24 C. Stout admitted to Mr. Smith that tax codes were "Greek" to him. (Transcript page 395, lines
25 15-18.)

26 Mr. Smith was never asked for any money during the meeting. (Transcript page 396, lines
27 8-10.) Mr. Smith was never asked how much he wanted to invest at the meeting. Mr. Smith

1 admitted that during this meeting no one recommended that any particular investment was
2 appropriate for him. (Transcript page 396, lines 14-16.) Mr. Smith was never asked to complete a
3 questionnaire during the meeting or provided with any wiring instructions for an investment.
4 (Transcript page 396, lines 17-25.) Mr. Smith admitted that he was not provided with a check to
5 make the investment by the Division, nor did any Respondent instruct him who to make a check
6 payable to for any investment. (Transcript page 397, lines 1-6.) He was never asked when he was
7 going to make a decision whether or not he would invest. (Transcript page 397, lines 7-10.)
8 Mr. Smith was advised to see an accountant and to see a CPA. (Transcript page 397, lines 11-14.)
9 Mr. Smith knew that Allen C. Stout had pled guilty to tax evasion in December 1997 when he went
10 into the meeting. (Transcript page 397, lines 15-22.)

11 Allen C. Stout advised that there were risks associated with investing in oil and gas just as
12 there is in every investment. (Transcript page 389, line 15 through page 390, line 11. Transcript
13 page 393, lines 4-10.) Mr. Smith was told there were three (3) different risks associated with
14 investing in oil and gas – drilling, completion and geological. (Transcript page 393, line 17
15 through page 394, line 14.)

16 **IV. THE HEARSAY HEARING.**³

17 Mr. Thomsen had no involvement with the investigation. (Transcript page 347, lines
18 20-23.) He was not even a Division employee at the time the TC&D was filed. (Transcript page
19 347, lines 16-19.) He had no personal knowledge whether Mr. Mr. Smith's testimony at his
20 deposition was accurate or inaccurate. (Transcript page 347, line 24 through page 348, line 2.)
21 Mr. Thomsen never met Allen C. Stout. (Transcript page 348, lines 9-14.) He never spoke to
22 Mr. Stout. He has never seen Mr. Stout sign his name. (Transcript page 348, lines 15-23.)
23 Mr. Thomsen, admitted that he could not recognize his signature. (Transcript page 348, line 24
24 through page 349, line 1.) Upon cross-examination, he admitted that he has no idea who signed
25 Exhibit S-1A (Application for Authority to Transact Business in Arizona). (Transcript page 356,
26

27 ³ On October 27, 2006, Respondents filed a Motion to Preclude Hearsay Evidence. The Motion was not ruled upon.
At a minimum, it should be considered when the Division's "evidence" is weighed by the Commissioners.

1 line 4 through page 357, line 10; transcript page 359, lines 5-8.) Mr. Thomsen took the witness
2 stand with nine (9) years of experience as a commissioned police officer. (Transcript page 24, lines
3 20-24.) He knew that the appropriate answers to questions under oath as to who signed the
4 documents presented to him were "I don't know."

5 During cross-examination, Mr. Thomsen admitted he did not know who wrote Exhibit S-8
6 (a Reserve Oil & Gas brochure), when it was written, who saw the document, if anyone, and
7 whether any individuals invested after seeing this document. He testified he was unaware whether
8 any of its content was incorrect. (Transcript page 368, lines 4-22.) He did, however, read into the
9 record the plain language of Exhibit S-8 clearly stating that it was an information only document,
10 not to be construed as a solicitation of an offer to sell or buy any securities. (Transcript page 368,
11 line 23 through page 369, line 10.) There is no evidence in the record to suggest this document
12 was used in connection with the offer or sale of any securities within or from Arizona at any time.

13 Division Exhibit S-9 (Reserve Drilling program information piece) resulted in a similar
14 exchange. Although Mr. Thomsen testified willingly during direct that this Exhibit had been
15 produced by Mr. Burton Bentley, Respondents' prior counsel, But the letter was signed by "MM."
16 Mr. Thomsen testified on cross-examination that he had no knowledge who wrote Exhibit S-9,
17 when it was written, and whether there were any inaccuracies in the document. (Transcript page
18 369, line 24 though page 370, line 8.) Although the geologist, Robert A. Lambert
19 ("Mr. Lambert"), is referred to in this Exhibit, Mr. Thomsen testified he saw no indication that
20 anyone interviewed Mr. Lambert or even sought to do so. (Transcript page 370, lines 15-20.)
21 There was no evidence that this document was used in connection with the offer or sale of any
22 securities within or from Arizona.

23 Mr. Thomsen's testimony regarding Exhibit S-10 (Cole Creek Private Offering
24 Memorandum) followed a similar pattern. Mr. Thomsen testified that Exhibit S-10 is dated
25 July 23, 2001. He further testified he had no idea who wrote the document or who received a copy
26 of the document. He did not know whether there was anything inaccurate in the document.
27 Although he had some passing familiarity with the phrase "private offering memorandum," he was

1 essentially uninformed regarding that exemption from the securities laws. (Transcript page 372,
2 lines 3-24; page 374, lines 11-21.) As with the prior two (2) exhibits, there was no evidence that
3 Exhibit S-10 was used in connection with the offer or sale of any securities within or from the
4 State of Arizona.

5 With regard to Exhibit S-11 (Wise III Private Offering Memorandum), Mr. Thomsen
6 admitted on cross-examination that he had no idea who wrote this private offering memorandum,
7 when it was written or the name of any person who saw the document. He indicated further that he
8 had no knowledge whether there was anything in the document that was untrue. He did not know
9 whether any money was raised in connection with the offering. Mr. Thomsen did not know
10 whether money was raised through the use of Exhibit S-11. (Transcript page 375, lines 10-14.)
11 There is no evidence that Exhibit S-11 was used in connection with the offer or sale of securities
12 within or from Arizona. (Transcript page 374, line 22 through page 375, line 17.)

13 Mr. Thomsen also testified regarding Exhibit S-13 (website printout). Mr. Thomsen had no
14 knowledge who, if anyone, other than investigator Smith saw Exhibit S-13. He did not know
15 whether anyone saw this document electronically or in hard copy. He did not know who prepared
16 the document, nor when it was prepared. He did not know whether there was anything untrue in
17 the document. (Transcript page 376, line 13 through page 377, line 2.) Mr. Thomsen read the
18 disclaimer on the Reserve website noting that the information was furnished for informational
19 purposes only and was not to be construed as an offer to buy or sell securities, nor was it to be
20 considered a solicitation to purchase or sell a security. The disclaimer noted that the offer to
21 purchase or sell any investment could only be done through a Private Placement Memorandum
22 ("PPM") and that Reserve made no guarantee or representation regarding the completeness or
23 accuracy of the information contained on the website. (Transcript page 377, lines 9-20.) There
24 was no evidence that Mr. Smith received a PPM.

25 Exhibit S-13 contained a second disclaimer at page ACC001277. It essentially repeated the
26 earlier disclaimer, but it also noted that an individual should rely solely on the advice or
27 recommendation of a legal and/or financial adviser. (Transcript page 378, line 13 through page

1 379, line 1.) There was no evidence that Exhibit S-13 was seen by anyone other than Mr. Smith
2 who testified he had no intention of investing.

3 The exhibits referred to above were introduced over objections into evidence in an attempt
4 to prejudice the Commission. They are not probative. They are not relevant.

5 **V. THE DIVISION FAILED TO PROVE ANY VIOLATION OF A.R.S. § 44-1991.**

6 The TC&D recites a number of alleged "facts," but the Division did not prove any of the
7 allegations contained in the TC&D violated A.R.S. § 44-1991. The Division clearly has the burden
8 of proof in this matter and it has failed completely to meet its burden. No expert, or even lay
9 person, was called to testify that any statements regarding oil and gas were untrue or any material
10 facts were omitted.

11 The Division's allegations regarding violations of the anti-fraud provisions of the Act
12 appear primarily premised upon alleged advice regarding tax matters and Mr. Stout's prior tax
13 charges. With regard to tax advice, the record is clear that the Respondents did not provide tax
14 advice. Allen C. Stout told Mr. Smith that pending changes to the tax code were "Greek" to him.
15 He strongly encouraged and recommended Mr. Smith confer with his accountant and his CPA.

16 The allegations regarding Mr. Stout's prior plea to a tax evasion charge as a basis for a
17 violation of the anti-fraud provision fails. The record is clear that Mr. Mangurian, Ms. Langley and
18 Mr. Ingell were all aware of Mr. Stout's prior problem. But even if these individuals were not
19 aware of Mr. Stout's prior conviction, it was not required to be disclosed.

20 The United States Securities and Exchange Commission ("SEC") Regulation S-K (Exhibit
21 R-6) contains the requirements of the items applicable to the content of the non-financial statement
22 portions of securities registration documents that are required to be disclosed to investors. On page
23 44 of Reg. § 229.401(f)(2), the SEC instructs issuers that they are only required to disclose events
24 that occurred during the past five (5) years that are material to the evaluation of the ability or
25 integrity of any director, person nominated to become a director or executive officer of a registered
26 entity. Paragraph 2 thereof notes that only criminal convictions during the past five (5) years are
27 required to be disclosed.

1 This hearing focused on transactions engaged in by individuals between December 2004
2 and December 2005. As the Division alleges in its TC&D, on February 14, 1997, Mr. Stout
3 pleaded guilty to one count of tax evasion. (TC&D at ¶ 32.) Five (5) years from that date is
4 February 14, 2002. The SEC would not require disclosure of Mr. Stout's 1997 tax evasion charge.
5 Mr. Stout's tax evasion charge, even if it had not been disclosed, was no longer material.

6 The Commission's own procedures and documents also show that Mr. Stout's tax evasion
7 charge was not material as shown by the Division's very first exhibit, Exhibit S-1A. As Paragraph
8 A(1) of the Commission's Certificate of Disclosure for Profit Corporations notes, only convictions
9 of certain felonies within the seven (7) year period prior to the filing and are required to be
10 disclosed. Thus, the Commission's own process shows that after seven (7) years, Mr. Stout's
11 conviction was no longer material. Of course, this is academic as the alleged investors were aware
12 of Mr. Stout's past even though there was no requirement that it be disclosed.

13 A fact seemingly lost in this process is that Allen C. Stout was not an officer or director of
14 the issuer, REO. Assuming, for the moment, and only this moment, that the Division's TC&D
15 allegations are true, Allen C. Stout was a salesman. The Division has never required Merrill
16 Lynch's or UBS's registered salesmen to disclose to their customers regulatory disciplinary
17 proceedings or litigation results concluding fraud had been committed. The Division has never
18 required registered broker-dealers such as Merrill Lynch, UBS and Morgan Stanley to disclose to
19 their customers findings of fraud against the firms and their registered personnel. If the Division
20 does not require these disclosures, and if the SEC and the Commission does not require Allen C.
21 Stout's prior tax evasion charge to be disclosed, how can the Division ask the Commission to
22 conclude there has been a violation of the anti-fraud provision of the Act, especially when the
23 alleged investors were aware of the tax evasion charge?

24 **VI. CONCLUSION.**

25 At the hearing, the Division attempted to create the illusion it had a case. Why did the
26 Division seek to introduce into evidence, over objection, offering materials when there would be
27 no evidence that these materials were ever shown to an investor, used to raise funds, and used

1 within or from the State of Arizona? There was no evidence that anything in those offering
2 memoranda were untrue or omitted. But again, despite its questioning on these irrelevant items,
3 the Division never asked whether any of those documents were offered or sold within or from the
4 State of Arizona. These documents were introduced for their potential prejudicial impact, not
5 because they had any probative value.

6 The Division asks the Commission to conclude that there have been violations of the Act
7 with regard to tax advice allegedly provided by the Respondents. However, the record could not be
8 clearer that Allen C. Stout told Mr. Smith that he should consult with his own accountant and CPA
9 with regard to tax issues. In addition, the materials related, and unrelated, to Reserve make it clear
10 that no tax advice was ever provided.

11 With regard to Mr. Ingell, the evidence introduced by the Division concerning his
12 investment was sparse. For example, we do not know what tax write-off he experienced on the
13 money his stepfather gave to him to invest. But upon information and belief, Mr. Ingell will be
14 entitled to a 100% write-off of his investment over a five-year period. In the three years since the
15 Division filed its TC&D, it is common knowledge that the price of oil has increased, in fact,
16 substantially increased at times during this period. Upon information and belief, Mr. Ingell is
17 continuing to receive revenue checks from his investment. While Mr. Ingell's purchase of the
18 investment was not done through the Respondents, it may be performing just fine.

19 There is only one appropriate result. This proceeding should be dismissed in its entirety.
20 The case lacked reliable and relevant evidence, and the evidence that was introduced was primarily
21 unreliable hearsay. The essential elements of the relevant statutes were not proven. Only the
22 "indiscernible" meeting with Mr. Smith occurred within this State, and no security was offered or
23 sold at this meeting.

24
25 ...

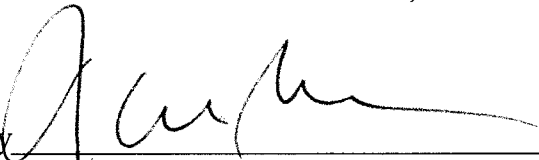
26 ...

27 ...

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1 RESPECTFULLY SUBMITTED this 26th day of November , 2008.

2 ROSHKA DeWULF & PATTEN, PLC

3
4 

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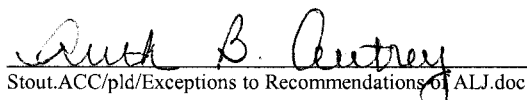
13 ORIGINAL and ten copies of the foregoing
14 filed this 26th day of November, 2008 with:

15 Docket Control
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Copy of the foregoing hand-delivered
20 this 26th day of November, 2008 to:

21 Marc E. Stern, Administrative Law Judge
22 Hearing Division
23 Arizona Corporation Commission
24 1200 West Washington Street
25 Phoenix, Arizona 85007

26 Matthew J. Neubert, Esq., Director
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